IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 54 OF 2005

State ... Appellant

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Abbas Khatib, Mapusa, Goa. ... Respondent

Ms. Winnie Coutinho, Public Prosecutor for the State.

Ms. Jyoti Tuvekar, Advocate for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 15TH SEPTEMBER,2005.

ORAL JUDGMENT

Heard Ms. W. Coutinho, the learned Public Prosecutor appearing on behalf of the Appellant/State and Ms. Jyoti Tuvekar, the learned Counsel appearing on behalf of the Respondent/Accused.

2. Admit.

3. Heard forthwith.

4. An accident was alleged to have taken place between Enfield motor cycle bearing No.MH-01-KA-3127 driven by PW2/Sagar Jadhav on which the deceased Puneet Menon was the pillion rider and water tanker No. GA-02-Z-6645 driven by the accused on 18-10-2003 at about 4 a.m. in which the said Puneet Menon died and the accused as the driver of the said water tanker was prosecuted under Sections 279, 337 and 304-A of I.P.C.

5. The learned J.M.F.C., Mapusa, by Judgment/Order dated 17-3-2005 has acquitted the accused for the said offences.

6. In acquitting the accused, the learned J.M.F.C. has placed much emphasis on the fact that both PW2/Sagar Jadhav as well as PW3/Hozefa Motiwala had initially referred to the said water tanker as a truck. However, the fact remains that in the very examination-in-chief both PW2/Sagar Jadhav and PW3/Hozefa Motiwala had not only referred to the vehicle driven by the accused as a water tanker but had also given its number as GA-02-Z-6645. Admittedly, it was this water tanker of the accused which had taken the deceased to Goa Medical

College, Bambolim where the said Puneet Menon was declared as brought dead. It was stated by PW3/Hozefa Motiwala that he had ran after the said truck/tanker and had stopped the accused as they needed his help and the accused had co-operated with them to take the deceased Puneet Menon to the hospital. The accused in his statement recorded under Section 313 of the Code of Criminal Procedure, 1973 had also admitted that as he was returning from Pilerne he had seen some persons who were praying for help and having pity on them he had taken one of the persons who had fallen down, to Goa Medical College, Bambolim and thereafter he had gone home.

7. The prosecution evidence shows that 6 persons who apparently were all tourists had gone from Carmona to Calangute and were returning from Calangute at rather an unearthly hour i.e. to say at 4.00 a.m. According to PW3/Hozefa Motiwala they had gone to a pub in the night at about 9.00 to 10.00 p.m. and had stayed there till 4.00 a.m. but at the same time he stated that they had not taken any liquor there, a fact which is rather difficult to be believed.

8. It appears that as they were coming, the Splendour motor cycle driven by Sweden George with pillion rider Ritesh Mehta was first followed

by the Kinetic Honda driven by PW3/Hozefa Motiwala with PW4/Keenan Torcato as pillion rider and then followed by the bullet Enfield driven by PW2/Sagar Jadhav with the deceased Puneet Menon as his pillion rider. The said Sweden George and Ritesh Mehta who were on the first Splendour motor cycle were not examined. The only witnesses who were examined to support the version of PW2/Sagar Jadhav were PW3/Hozefa Motiwala and the pillion rider PW4/Keenan Torcato.

9. Although, the accident is stated to have taken place on Chogam road on their way from Calangute to Carmona, the prosecution was unable to prove the exact spot of the accident. PW1/Prakash Palyekar who was one of the panch witness stated that the accident spot was at Tambarwado on Chogam road going from Calangute to Panaji and he was shown the spot by P.S.I. Rajesh Kumar. Admittedly, at the time when the panchanama was drawn at about 16.00 hours on 18-10-2003 the vehicles allegedly involved were not at the scene and according to PW1/Prakash Palyekar there were no marks on the spot as well. PW6/PSI Rajesh Kumar also did not state as to who showed to him the scene of offence though he admits that there were no skid marks or any other accidental marks seen on the spot. It is, therefore, obvious that the prosecution had not proved the exact place where the accident had taken place.

10. Although, the Autopsy Report was produced to prove the death of Puneet Menon no medical certificate was produced to prove the injuries of PW2/Sagar Jadhav who had stated that after the fall he was dragged along with a bike to a considerable distance. If as per PW2/Sagar Jadhav he had fallen as a result of the dash and was dragged to a distance, according to PW3/Hozefa Motiwala, PW2/Sagar Jadhav was very much okay and was searching for Puneet Menon who was found in a pool of blood.

11. As per PW2/Sagar Jadhav as he was coming, the truck was overtaking his bike and while overtaking, the truck hit his bike as a result of which he was crushed with the bike along with Puneet Menon and he was locked with the bike as his foot was stuck in the bike and he was dragged along with the bike to a considerable distance and he was off the road and was helped by his friend PW4/Keenan Torcato to rise up. The version of PW2/Sagar Jadhav that he was dragged and then was helped by his friend PW4/Keenan Torcato to rise up has not been supported either by PW4/Keenan Torcato or for that matter PW3/Hozefa Motiwala, the latter having seen PW2/Sagar Jadhav

very much okay and in the process of searching the deceased. PW2/Sagar Jadhav's version that because the truck hit him he was crushed with the bike along with Puneet Menon and that he was locked with the bike as his foot was stuck in the bike is little difficult to understand as to how exactly the accident took place. In case the truck/tanker of the accused had hit the bike driven by PW2/Sagar Jadhav then it is more probable that both of them would be thrown off the bike and on the road and both would have been injured. The version given by PW3/Hozefa Motiwala is that the truck came to overtake PW2/Sagar Jadhav from behind and hit him and he fell down. Probably, PW3/Hozefa Motiwala who was much ahead of PW2/Sagar Jadhav could not have seen the truck driven by the accused hitting PW2/Sagar Jadhav. At the same time, PW3/Hozefa Motiwala stated that it is his friend who heard the noise of collusion and because of that they stopped. It is also quite probable that the noise of collusion referred to by PW3/Hozefa Motiwala as well as PW4/Keenan Torcato could be the noise of the bike of PW2/Sagar Jadhav falling on the road and not of any dash having been given by the tanker driven by the accused. The earlier version given by PW2/Sagar Jadhav to PW6/PSI Rajesh Kumar at the time when

his complaint was recorded was that the tanker had slightly hit the motor cycle towards his right and as a result of that he had lost his control and the pillion rider Puneet Menon had fallen on the road and had sustained injuries. He had not referred to his fall or his dragging when he gave his first version to PW6/PSI Rajesh Kumar and, therefore, his subsequent version before the Court could only be considered to be an improvement. The version of PW3/Hozefa Motiwala militates against the version given by PW2/Sagar Jadhav. As per the version of PW3/Hozefa Motiwala they saw the truck passing and as there was no way of getting the deceased to the hospital he ran after the truck and stopped him and informed the driver to stop the truck as they needed his help to take the deceased to the hospital. If, it was then felt by PW3/Hozefa Motiwala that the truck of the accused had dashed either of his friends, namely, PW2/Sagar Jadhav or the deceased Puneet Menon then he would have expressly told the accused that his truck was involved in the accident. That was not the case. It is also not the case of PW3/Hozefa Motiwala that when he returned to the place where PW2/Sagar Jadhav was searching deceased Puneet Menon he was told by PW2/Sagar Jadhav that a tanker had given him a dash, if at all.

PW3/Hozefa Motiwala had not even stated what was the distance between his bike and the bike driven by PW2/Sagar Jadhav though he has stated that the distance might have been about 25 meters. It is also not the case of PW2/Sagar Jadhav that PW3/Hozefa Motiwala was driving his Kinetic Honda within hearing distance. In fact, the evidence of PW2/Sagar Jadhav that the truck of the accused hit his bike was not at all corroborated and in the background of rather conflicting versions given by him, at two different stages the same could not have been accepted to convict the accused under Sections 279, 337 and 304-A I.P.C.

12. There is no merit in this Appeal and consequently the same is hereby dismissed.

N. A. BRITTO, J.

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